

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 3523 of 1985

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STEEL ROLLING MILLS OF SAURASHTRA
VERSUS
MUN. CORPN. OF THE CITY OF BHAVNAGAR

Appearance:

MR AM KAPADIA for the Petitioner
MR JR NANAVATI for Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 31/07/2000

C.A.V. JUDGMENT

1. Learned counsel for the respondent submits that this matter is squarely covered by the decision of this

Court given in special civil application No.6161 of 1984 decided on 20th November, 1995 (Coram: N.N. Mathur, J). It has next been submitted that this petition deserves to be dismissed only on the ground that the petitioner has concealed very material and important fact from this court.

2. Briefly stating the facts of the case are that the petitioner- Steel Rolling Mills of Saurashtra, a partnership firm registered under the Indian Partnership Act, 1952, filed this petition under Article 226 of the Constitution and prayed for the declaration that re-rollable scrap including scrap plates from dismantled ships brought by the petitioner within the octroi limits of the Municipal Corporation of Bhavnagar for the use as raw goods in re-rolling mills are covered by Item 26 in the Schedule 'B' to the Bhavnagar Municipality Octroi Bye-laws and chargeable to octroi duty at the rate of Rs.5-70 per M.T. and are not covered by the description 'iron plates' of Item 25 in the said Schedule 'B' and are not chargeable to octroi duty at the rate of one paise per rupee ad valorem or any other rate applicable to the said Item No.25 in the said Schedule 'B'. Further prayer has been made for restraining the Municipal Corporation of the city of Bhavnagar from levying or collecting octroi duty at the rate of one paise per rupee ad valorem or any other rate applicable to 'iron plates' in Item 25 of the said Schedule 'B'. Next prayer has been made to command the Municipal Corporation of the city of Bhavnagar to refund to the petitioners excess octroi duty recovered from the petitioners as aforesaid on re-rollable scrap under Item 25 instead of under Item 26 of Schedule 'B'.

3. On 1-7-97, this petition came up for admission in court on which date, the counsel for the petitioner made a statement that in the special civil application No.6161/84, identical point is involved. On 2-7-1985, this matter has been admitted. The special civil application No.6161/84 is decided on 20th November, 1995.

4. Having gone through the judgment of this court in the aforesaid writ petition, I am satisfied that this matter is squarely covered by that decision.

5. Otherwise also, rejoinder to the reply has not been filed and as a result of which the averments made therein by the respondent stand uncontroverted. The respondent has come up with a case that the Indian Steel Re-rollers' Association, Bhavnagar through its

Secretaries filed Regular Civil Suit No.506 of 1984 in the Court of Civil Judge (S.D.), Bhavnagar inter-alia contending therein that the plate cuttings which are imported by them from Alang ship Breaking Yard to Bhavnagar through Talaja Octroi Naka are not iron plates and that the respondent is not entitled to collect the octroi under Entry 25 of the Bhavnagar Nagarpalika Octroi Rules and that the action of the respondent in charging the octroi under Entry 25 is illegal and ultra vires and asked for the relief of declaration and injunction restraining the respondent from charging octroi under Entry 25 on the import of the said materials from Alang Ship Breaking Yard. This suit is filed in a representative capacity under Order 1 Rule 8 of the Civil Procedure Code. The learned Civil Judge issued a public notice under Order 1 Rule 8 of the Civil Procedure Code and allowed the Secretaries of the said Association to file the suit in a representative capacity by order dated 25th June, 1984. This fact has also not been disputed that together with the plaint, the said Association furnished a list of members on whose behalf the suit was filed and the said list contains the names of the petitioners in this special civil application. In the suit, the Association filed an application for injunction under Order 39 Rules 1 and 2 of the Civil Procedure Code read with section 151 of the Civil Procedure Code. In the said suit they prayed for ad-interim injunction restraining the respondent from collecting the octroi under Entry 25 in respect of the disputed materials. Initially, ad-interim injunction as prayed for by the plaintiff has been granted but after hearing the parties, vide order dated 16th July, 1984, injunction has been declined. Aggrieved of the said order of the trial court, the Association filed Misc. Civil Appeal No.143 of 1984 in the Court of District Judge, Bhavnagar. The appeal was dismissed on 31st August, 1984. This special civil application has been filed in this court by the petitioners on 28th June, 1985 i.e. after the dismissal of the appeal. All these facts were within the knowledge of the petitioners.

6. The cause of action as well as the reliefs prayed for in both these matters i.e. the civil suit and this special civil application are identical. In case this fact would have been disclosed, possibility of admitting this petition by this court would not have been there. In the same matter, the petitioners have no right to file the suit as well as the special civil application. The suit has been filed in a representative capacity and list of the persons for

whose benefit the suit has been filed has been furnished in the suit in which admittedly the name of the petitioner is there. Simultaneously, two parallel remedies cannot be availed of by the petitioners. In fact this special civil application is abuse of the process of the Court. By concealing this fact, the petitioners in fact got the interim relief from this court. Two courts below have not considered it to be a fit case to grant interim relief but by concealing this fact, the petitioners have obtained the interim relief from this court. In case this fact would have been stated that the suit has been filed, which is pending and that interim relief as prayed for in the suit has been declined, which order has also been confirmed in appeal, this court would not have granted the interim relief in favour of the petitioners. Only on this preliminary ground, this petition deserves to be dismissed. In fact, in such matter, the court should not have felt content and satisfied by dismissing the petition but being a serious matter, contempt proceedings be initiated and appropriately the party may be punished. That is the reason why the parties in the court do not hesitate to conceal all the material facts. Moreover, the tendency of the litigants to shift to the remedy of writ petition where they fail to get interim relief is also clearly an abuse of the process of the Court. However, in the facts of this case, I do not consider it to be appropriate to draw contempt proceedings against the petitioners but exemplary costs deserves to be awarded to be respondent. There is yet another reason for this exemplary costs to be imposed. In both these matters i.e. this special civil application and the special civil application No.6161/84, the same counsel is appearing. When the special civil application No.6161/84 has been dismissed by this court on 20th November, 1995, the counsel should have informed this fact to this court and should have paid this octroi. By not disclosing this fact that that matter is dismissed, the petitioners have enjoyed this stay order for all these years i.e. about more than four years and nine months. It is also equally serious that the Corporation has also not taken appropriate steps to get this petition decided on the same line on which the aforesaid special civil application has been decided.

7. In the result, this special civil application is dismissed. Rule discharged. Interim relief granted stands vacated. The petitioners are directed to pay Rs.10,000/= as costs of this petition to the Corporation.

zgs/-